

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5792 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GENERAL MANAGER, AHMEDABAD NEW TEXTILE MILLS

Versus

DAHYABHAI N PATEL

Appearance:

MR KAUSHAL THAKER for the Petitioner

MR MH SHAIKH for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/96

ORAL JUDGEMENT

1. Head learned counsel for the parties. The petitioner has filed this writ petition before this Court challenging thereunder the order and judgment annexure 'A' and 'B' passed by the Labour Court, Ahmedabad and Industrial Court Gujarat at Ahmedabad.

2. The respondent workman was appointed in the mill of the petitioner as jobber in the year 1958. Under

notice, dated 27th December, 1978, the workman respondent was sought to be retired on attaining the age of 62 years with effect from 1-1-1979. This order led to filing of an application by the workman before the Labour court at Ahmedabad. The respondent workman made a grievance that it is a case of premature retirement. He has come up with a case that as per the record entry made in the birth register his date of birth is 5-2-1920 and he could have been ordered to be retired in the year 1982. The Labour court found the matter in favour of the respondent-workman, but passed the order only for the payment of full backwages for the period 1-1-1979 to 31-7-1979. The respondent-workman has taken up the matter in appeal before the Industrial Court and the Industrial Court has not accepted the date of birth of the workman to be 5-2-1920. It has further recorded a finding that it is very difficult to decide the actual date of birth of the employee. After recording these two findings, the Industrial Court, held that it can be said that the employee must be born in between 1916 to 1920. After giving this finding, the order has been made that the interest of justice will be served in case, the order for giving full backwages from 1-1-1979 to 31-12-1980 is passed in favour of the employee, respondent-workman and that order has been made accordingly. Reliance has been placed by the petitioner on the entry made in the application which is submitted to Provident Fund authorities. That too has also not been relied by the courts below. Though the way in which both the courts proceeded may not be wholly correct, but nevertheless, the petitioner has also not produced any oral evidence to establish that what is the age of the workman. The Tribunal has considered it to be not safe to rely on some assessment of date of birth of the workman on the basis of some declaration made by him in the application submitted for PF.

3. Taking into consideration the totality of the facts of this case, I do not consider it appropriate to interfere with the order. The Industrial Court has drawn a balance in between the parties and it cannot be said that the order has been made for which it has no jurisdiction. This Court sitting under Article 227 of the Constitution of India do not consider it to be justified in extending its jurisdiction in the aforesaid Article in the present case. The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decision. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done, unless the

High Court interferes. Both the courts below have not accepted the date of birth as given of the concerned workman by the employer as well as himself. After reaching such a conclusion, some date of birth has to be taken and that exactly has been done in the present case. The workman has been given some relief and the way in which the relief has been granted may not be termed as a flagrant abuse of fundamental principles of law or justice where grave injustice would be done to the petitioner in case this court does not interfere.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated.

zgs/-